

# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

400T0427

### SENATE JUDICIARY ENGROSSED NO. **SB 42** - 1/19/2012

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding habeas corpus.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 21-27-3.1 be amended to read as follows:

4 21-27-3.1. An application for relief Proceedings under this chapter may be filed at any time  
5 except that proceedings thereunder cannot be maintained while an appeal from the applicant's  
6 conviction and sentence is pending or during the time within which such appeal may be  
7 perfected.

8 Section 2. That § 21-27-3.2 be repealed.

9 ~~—21-27-3.2. An application under this chapter may be dismissed if it appears that the state or~~  
10 ~~the applicant's custodian has been prejudiced in its ability to respond to the application by delay~~  
11 ~~in its filing, unless the applicant shows that the application is based on grounds of which he~~  
12 ~~could not have had knowledge by the exercise of reasonable diligence before the circumstances~~  
13 ~~causing the prejudice occurred. It shall be presumed that the state or the applicant's custodian~~  
14 ~~has been prejudiced if the application is filed more than five years after signing, attestation and~~



1 ~~filing of the judgment or order under which the applicant is held. This presumption is rebuttable~~  
2 ~~pursuant to § 19-11-1.~~

3 Section 3. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 A two-year statute of limitation applies to all applications for relief under this chapter. This  
6 limitation period shall run from the latest of:

- 7 (1) The date on which the judgment became final by the conclusion of direct review or  
8 the expiration of the time for seeking such review;
- 9 (2) The date on which the impediment to filing an application created by state action in  
10 violation of the constitution or laws of the United States or of this state is removed,  
11 if such impediment prevented the applicant from filing;
- 12 (3) The date on which the constitutional right asserted in the application was initially  
13 recognized by the Supreme Court of the United States or the Supreme Court of this  
14 state if the right has both been newly recognized and made retroactively applicable  
15 to cases on collateral review; or
- 16 (4) The date on which the factual predicate of the claim or claims presented could have  
17 been discovered through the exercise of due diligence.

18 Section 4. That § 21-27-4 be amended to read as follows:

19 21-27-4. If a person has been committed, detained, imprisoned, or restrained of ~~his~~ liberty,  
20 under any color or pretense whatever, civil or criminal, and if upon application made in good  
21 faith to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is  
22 satisfactorily shown that the person is without means to prosecute the proceeding, the court or  
23 judge shall, if the judge finds that such appointment is necessary to ensure a full, fair, and  
24 impartial proceeding, appoint counsel for the indigent person pursuant to chapter 23A-40. Such

1 counsel fees or expenses shall be a charge against and be paid by the county from which the  
2 person was committed, or for which the person is held as determined by the court. Payment of  
3 all such fees or expenses shall be made only upon written order of the court or judge issuing the  
4 writ. The ineffectiveness or incompetence of counsel, whether retained or appointed, during any  
5 collateral post-conviction proceeding is not grounds for relief under this chapter.

6 Section 5. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 A claim presented in a second or subsequent habeas corpus application under this chapter  
9 that was presented in a prior application under this chapter or otherwise to the courts of this state  
10 by the same applicant shall be dismissed.

11 Before a second or subsequent application for a writ of habeas corpus may be filed, the  
12 applicant shall move in the circuit court of appropriate jurisdiction for an order authorizing the  
13 applicant to file the application.

14 The assigned judge shall enter an order denying leave to file a second or successive  
15 application for a writ of habeas corpus unless:

16 (1) The applicant identifies newly discovered evidence that, if proven and viewed in light  
17 of the evidence as a whole, would be sufficient to establish by clear and convincing  
18 evidence that no reasonable fact finder would have found the applicant guilty of the  
19 underlying offense; or

20 (2) The application raises a new rule of constitutional law, made retroactive to cases on  
21 collateral review by the United States Supreme Court, that was previously  
22 unavailable. The grant or denial of an authorization by the circuit court to file a  
23 second or subsequent application shall not be appealable.

24 Section 6. That § 21-27-16.1 be repealed.

1     ~~21-27-16.1. All grounds for relief available to a petitioner under this chapter shall be raised~~  
2     ~~in his original, supplemental or amended application. Any ground not raised, finally adjudicated~~  
3     ~~or knowingly and understandingly waived in the proceedings resulting in his conviction or~~  
4     ~~sentence or in any other proceeding that the applicant has taken to secure relief from his~~  
5     ~~conviction, or sentence, may not be the basis for a subsequent application, unless the court finds~~  
6     ~~grounds for relief asserted which for reasonable cause were omitted or inadequately raised in~~  
7     ~~the original, supplemental, or amended application.~~